

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA  
ex rel., CONSTANCE LYTTLE,

Plaintiff,

v.

AT&T CORPORATION, a/k/a AT&T  
Accessible Communications Services,

Defendant.

Civil Action No. 10-1376

JUDGE NORA BARRY FISCHER

MAGISTRATE JUDGE  
ROBERT C. MITCHELL

ELECTRONICALLY FILED

**UNOPPOSED MOTION OF THE UNITED STATES TO VACATE THE  
NOVEMBER 15, 2012 REPORT AND RECOMMENDATION, AND THE  
MEMORANDUM ORDERS OF DECEMBER 28, 2012 AND JANUARY 15, 2013**

AND NOW, comes the United States of America (“United States”), by its attorneys, Stuart F. Delery, Assistant Attorney General, Daniel A. Spiro and Charles D. Schmitz, Trial Attorneys, Department of Justice, and David J. Hickton, United States Attorney for the Western District of Pennsylvania, and Paul E. Skirtich, Assistant U.S. Attorney for said district, and respectfully requests that this Court grant the United States’ Motion to Vacate the Report and Recommendation of Magistrate Judge Robert C. Mitchell and the Memorandum Orders of this Court of December 28, 2012 and January 15, 2013. In support of this Motion, the United States avers as follows:

1. On November 15, 2012, Magistrate Judge Robert C. Mitchell issued his Report and Recommendation (Civ. Action Doc. 70) in response to the Defendant’s Motion to Dismiss the Complaint in Intervention of the United States.

2. On December 28, 2012, the Honorable Nora Barry Fischer issued an Order (Civ. Action Doc. 81) which adopted Magistrate Judge's Report and Recommendation as the Opinion of the Court.

3. On January 15, 2013, the Honorable Nora Barry Fischer issued an Order (Civ. Action Doc. 87) which granted Defendant's Partial Motion for Reconsideration of the Report and Recommendation of Magistrate Judge Robert C. Mitchell of January 4, 2013 which, in effect, rejected the position of the United States concerning the issue of "federal funds" and yet did not dismiss the United States' Complaint in Intervention.

4. Over the course of the last few months, the parties have engaged in settlement negotiations. An express condition for settlement was AT&T's non-objection to a motion by the Department of Justice and the United States Attorney's Office for the withdrawal of the above Report and Recommendation and the Memorandum Orders.

5. The Parties have now agreed to settle this case.

6. Though it is uncommon to ask for an Opinion to be vacated, the Department of Justice and the United States Attorney's Office respectfully believe that the decisions holding that the funds deposited into the TRS Fund are not property of the United States are erroneous.

7. The United States has an avid interest in having the False Claims Act continue to protect "federal funds" from fraud. What constitutes "federal funds" was an issue contested in this case and ultimately decided against the United States by this Court. The United States adamantly maintains that monies raised by Congressional levy, accounted for and included in the federal budget, and overseen by the Federal Communications Commission, as are the TRS Fund in this case, are properly considered federal funds.

8. Since the decision of this Court in January 2013, the Southern District of Texas in United States ex rel. Shupe v. Cisco, et al., Civ. No. 2:10-cv-8, Order, Doc. 75 (S.D. Tex. May 13, 2013), issued a lengthy opinion on the subject and held that funds passing outside of the United States treasury but collected pursuant to a mandate set forth by Congress and distributed in accord with Federal regulations are “federal funds,” supporting the same principle that the United States is arguing in this case. Id. at 11-13. See the Attached copy of the decision.

9. Counsel for the Relator does not object to this Motion.

10. Counsel for AT&T does not object to this Motion.

WHEREFORE, based on the above, the United States respectfully requests this Court to withdraw the Report and Recommendation of November 15, 2012 (Civil Action Doc. 70) and the Memorandum Orders of December 28, 2012 (Civil Action Doc. 81) and January 15, 2013 (Civil Action Doc. 87).

Dated: November 7, 2013

Respectfully submitted,

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**CERTIFICATION OF SERVICE**

I hereby certify that on this 7th day of November, 2013, a copy of the foregoing **UNOPPOSED MOTION TO VACATE THE REPORT AND RECOMMENDATION OF NOVEMBER 15, 2012 AND THE MEMORANDUMS OF DECEMBER 28, 2012 AND JANUARY 15, 2013** was filed electronically with the Clerk of the Court using ECF, which will send notification that such filing is available for viewing and downloading to the following counsel of record:

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